Bonhomme, Penny

From: Michael.Carius@Norwalkhealth.org
Sent: Thursday, March 15, 2012 2:59 PM
To: PHC Testimony
Subject: TESTIMONY FOR *H.B. No. 5434 (RAISED) AN ACT CONCERNING THE PROFESSIONAL STANDARD OF CARE FOR EMERGENCY MEDICAL CARE PROVIDERS.

Members of the Public Health Committee,

I would like to testify in support of H.B. No. 5435 (raised) An Act Concerning the Professional Standard of Care for Emergency Medical Care Providers.

I am an Emergency Physician. I have been practicing in Connecticut for 29 years. I am currently the Chairman of the Emergency Department at Norwalk Hospital. I would like to share with you 2 crises that are affecting Emergency Departments thoughout the State of Connecticut.

The first crisis is timely access to Emergency Medical Care. As I am sure that you are well aware, Emergency Departments serve the public as the ultimate safety net in a fraying healthcare delivery system. This safety net function is one that is embraced by Emergency Departments and by Emergency Physicians everywhere. Because everyone, insured and uninsured alike, does not have access to regular, routine medical care, the role of safety net falls on the Emergency Departments. Ultimately, many patients who have not received adequate ongoing care end up in Emergency Departments with complications of those conditions that have either been neglected or inadequately treated. Emergency Departments do their best in these circumstances, but the numbers of those in need are increasing and the resources to care for them are not increasing commensurately.

Additionally, there is a federal law known as EMTALA (the Emergency Medical Treatment and Active Labor Act) which was first passed by Congress in 1985 as an attempt to prevent "patient dumping" (hospitals refusing to evaluate and treat patients without financial resources) which gives every American (as well as non-citizens) their only real "right" to healthcare.
It mandates rather simply that every patient who "comes to an Emergency Department" and wishes to be seen is entitled by law to 2 medical care actions without consideration of the ability to pay: 1. an adequate Medical Screening Examination to determine whether or not an Emergency Medical Condition exists; and 2. if an Emergency Medical Condition is found to exist, it must be stabilized to the full extent and capability of the Hospital or the patient must be transferred to a Hospital that has that capability and capacity to do so. This law has been modified many times legislatively and by regulation and by legal interpretation over the years, but the fact remains that the Emergency Physician is bound by law to see every patient who presents to an Emergency Department and stabilize any Emergency Medical Condition that is found, without regard to ability to pay. Thus, in many respects, Hospitals and Emergency Physicians have no choice over the patients that present to them through the Emergency Department yet are still obligated to do everything in their power to treat them successfully. Frequently there is no or little financial remuneration for this mandated service.

An extension of this law EMTALA extends to the second crisis impacting Emergency Departments today: that of insufficient numbers of Specialist Physicians willing to take call for Emergency Departments. When a Specialist is oncall to the Emergency Department, he is obligated under EMTALA to evaluate a patient with an Emergency Medical Condition and assist in the stabilization of that Emergency Medical Condition to the best of his ability. The Specialist, too, faces a likelihood of no or little remuneration for this service. This then becomes a significant reason why Specialist Physicians are increasingly unwilling to be oncall to Emergency Departments, which is now reaching epidemic proportions and affecting the quality of care available.

Beyond the simple economics of receiving little or no remuneration for this mandated service, there is the added likelihood that patients who present to the Emergency Department with Emergency

Medical Conditions are high risk in many respects and have a higher likelihood of poor outcomes. These patients are unknown to both the Emergency Physician and the Specialist Physician, which adds to the risk of a poor outcome. This high risk of a poor outcome translates into a higher likelihood of a Medical Malpractice claim being filed, which then accounts for a second significant reason why Specialist Physicians are increasingly unwilling to be oncall to Emergency Departments, adding to the Oncall Crisis.

The bill before you, H.B. No. 5434, addresses only the second half of the dilemma faced by Emergency Physicians on a daily basis and the latter of the 2 causes for the second crisis, that of the Oncall Specialist Physicians. Since both Emergency Physicians and the Oncall Specialist Physicians willingly provide EMTALA-mandated care for patients without regard to financial means, it is only right to lower some of the Medical Malpractice Liability risk that they inevitably face when caring for these patients by raising the standard of burden of proof of malpractice and substituting "clear and convincing evidence" for "negligence" in paragraph
(1) of Section 52-184c, subsection (a), paragraph (2) and recommending the changes in Section 52-557b, subsection (a). The lowering of some of the risk inherent in and attendant to caring for patients in the Emergency Department mandated by EMTALA represents a significant step in addressing the Oncall Specialist Physician Crisis.

It is important for all of us to remember that it is vitally important that we preserve the quality of care in our Emergency Departments by addressing the issues important to Emergency Physicians and Oncall Specialist Physicians, because we all need--or will need someday--a functional high quality Emergency Department to care for us or our neighbors or our families in their time of need.

I thank you for your attention and for the privilege of sharing my testimony with you.

Sincerely,

Michael Carius, MD, FACEP
Chairman, Emergency Department
Norwalk Hospital
203-852-2281